

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL).

October 8, 2003

Dear Xxxxx:

This letter is in response to your letter dated June 13, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company located in CITY/STATE is a manufacturer of ultrasound equipment. We have just recently started to offer customers on a monthly basis a variety of service plans that will allow them access to our website and download digital images for storage or the ability to print out their scan on their computer. I have included an outline below for each type service plan and what it offers to the customer. Could you please provide our company a taxability ruling on these types of service.

Your cooperation in this matter is greatly appreciated. Please do not hesitate to call me if you have any additional questions or concerns.

I have included a self addressed stamped envelope for your convenience.

Taxable y or n

Silver Elite

_____ **Total Reliability Plan** - Provides online printing of exam results, calibration, and twelve-month exam storage. 0003-0087

_____ **Total Reliability Plan with Sontac** - Provides online printing of exam results, calibration, twelve-month exam storage, and monthly supply of Sontac gel pads (quantity of 100 gel pads per month).
0003-0089

Gold -Elite

- _____ **Total Reliability Plan** - Provides online printing of exam results, calibration, and twelve-month exam storage. 0003-0087
- _____ **Total Reliability Plan with Sontac** - Provides online printing of exam results, calibration, twelve-month exam storage, and monthly supply of Sontac gel pads (quantity of 100 gel pads per month). 0003-0089

Platinum Elite

- _____ **Total Reliability Plan** - Provides online printing of exam results, calibration, and twelve-month exam storage. 0003-0087
- _____ **Total Reliability Plan with Sontac** - Provides online printing of exam results, calibration, twelve-month exam storage, and monthly supply of Sontac gel pads (quantity of 100 gel pads per month). 0003-0089
- _____ **Total Reliability Certification Plan** - Provides annual calibration through DU Customer Service Department and coverage under the Total Reliability Warranty Program. Calibration is performed on an annual basis, and a Next-Day Loaner instrument is provided for the duration of the calibration servicing. 0003-0122

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate.

In general, in order to qualify as a medical appliance, the product must directly substitute for a malfunctioning part of the body. Some of the products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes. Other products that directly substitute for a malfunctioning part of the body include urological catheters, leg bags, ostomy pouches and drain bags, and mastectomy prosthetic devices such as forms and bras.

Please note that supplies, such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues and towelettes and cosmetics, such as lipsticks, perfume and hair tonics do not qualify for the reduced rate. Sterile dressings, bandages and gauze do qualify for the reduced rate.

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is

part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3).

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information, see 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk